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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

KEN ROSS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: House Bill 5635, as introduced
TOPIC: Prohibits the practice of "data mining"
SPONSOR: Representative Lisa Brown
CO-SPONSORS: Representatives Lesia Liss, Harold Haugh, Vincent Gregory, Dian Slavens, Kate Segal, Jon Switalski, Douglas Geiss, Bob Constan, Mike Huckleberry, Rashida Tlaib, Robert Jones, Fred Durhal, George Cushingberry, Jimmy Womack, LaMar Lemmons, Coleman Young, David Nathan, Woodrow Stanley, Sarah Roberts, Lee Gonzales, Gabe Leland, Ellen Cogen Lipton
COMMITTEE: House Committee on Insurance
Analysis Done: December 2, 2009

POSITION

The Office of Financial and Insurance Regulation (OFIR) supports this legislation.

PROBLEM/BACKGROUND

The federal Gramm-Leach-Bliley (GLB) Act established standards for the disclosure of a consumer's non-public personal information, defined to include both private financial information and private health information, and directed state insurance authorities to implement its provisions within a specified time. Michigan adopted the National Association of Insurance Commissioners' (NAIC) model regulation to implement the GLB Act privacy provisions for financial information as MCL 500.501 et seq. of the Michigan Insurance Code. Since GLB set a federal floor for privacy protection and allowed states to retain more stringent privacy protections, Michigan specifically preserved in MCL 500.501 its more stringent protections for health and medical information. Chapter 5 of the Insurance Code thus contains the GLB required privacy provisions for non-public personal financial information. However, there is growing concern that insurance companies collect and sell a variety of policyholders' personal information to third parties without the policyholders' knowledge or consent.

DESCRIPTION OF BILL

The proposed legislation would amend the Insurance Code to expand the definition of “nonpublic personal financial information” to include age, sex, race, address, type of car driven, average number of miles driven annually to the current definition. All insurance licensees would also be required to protect this nonpublic information unless they receive the prior and specific informed consent of the affected individual.

SUMMARY OF ARGUMENTS

Pro

Currently, many companies require consumers to “opt out” if they do not want their personal information to be shared with a third party. However, most consumers are unaware of this provision and if they do not specifically “opt out”, their rights under state and federal laws are unknowingly waived and their personal information can be provided to and used by third parties in a variety of ways. The proposed legislation would require insurance companies to make public their policy on the protection of nonpublic personal financial information. Most importantly, a consumer would be required to “opt in” if they want to allow their insurance company to share any of their personal information. These steps will increase consumer protection and ensure that the only information that is shared is that which consumers have specifically authorized.

Con

Michigan adopted the NAIC model to address federal requirements outlined in GLB. The proposed legislation will change many of the statutory sections of the Insurance Code that were adopted as part of the NAIC model. The proposed legislation eliminates a number of definitions used under the GLB Act to achieve nationwide uniformity in privacy standards for non-public personal financial information. The exact impact of all changes is unclear, but if the definitions are clarified for consistency with the GLB Act, any concerns of federal preemption should be reduced.

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in this bill:

(a) To the Office of Financial and Insurance Regulation:

Budgetary: OFIR may incur additional expense to ensure that insurance companies are aware of the amendments contained in this legislation, to monitor the industry for compliance and to educate consumers on their privacy rights.

Revenue:

Comments:

(b) To the Department of Energy, Labor & Economic Growth: None known.

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan: None known.

Budgetary:

Revenue:

Comments:

(d) To Local Governments within this State: None known.

Comments:

OTHER STATE DEPARTMENTS

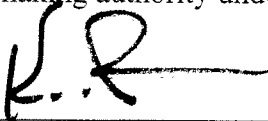
None known.

ANY OTHER PERTINENT INFORMATION

None known.

ADMINISTRATIVE RULES IMPACT

The proposed legislation would amend the Michigan Insurance Code. OFIR has general rulemaking authority under the Insurance Code, 1956 PA 218.



Ken Ross
Commissioner

12-2-09

Date

